



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Ref: ENF-L

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Mr. Kevin Murray, Esq.
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201 South Main Street
Salt Lake City, Utah 84111-2266

Dear Mr. Daley and Mr. Murray:

Thank you for taking the time to talk to me yesterday about EPA's proposal for moving forward on resolution of issues at the Richardson Flat Superfund Site. The purpose of this letter is to document that proposal for your further review and to clarify some issues raised during those discussions.

EPA has now reviewed all the information currently available to it relating to the potential liability of parties at what we have described as OU#3 and what we are now proposing as OU#4. While that review has identified two other potentially responsible parties, the information currently available paints a picture of relatively lesser involvement. I understand that you may disagree with this analysis, but suggest that such disagreement only supports the proposal being made. I am happy to discuss this with either or both of you at your request.

EPA proposes that the work be divided between Park City and UPCM by operable unit. UPCM would conduct the EE/CA and removal action on OU#3 and Park City would conduct the EE/CA and removal action on OU#4, the Prospector Drain. UPCM will pay to Park City 20% of all response costs incurred by Park City in performing EPA-approved work on OU#4. Park City will pay to UPCM 10% of all response costs incurred by UPCM in performing EPA-approved work on OU#3. Minor adjustments to the cash contributions can be discussed during negotiations. If the Action Memorandum determines that the properties previously considered for use as a repository are appropriate for such use, Park City will donate those properties to UPCM for its ultimate operation of the repository. ASARCO funds will be used to construct the repository. As a result of the ASARCO funding and Park City's donation of the repository land, Park City will not be required to pay a tipping fee for disposal of contaminated soils from its

property at Middle Reach. The other parties identified as potentially liable will not be noticed by EPA at this time, but would not be protected from potential contribution actions. The Utah State Parks Department, given its limited role in the contamination at the Site, will be provided with covenants and contribution protection.

EPA will provide the parties with a settlement agreement (Agreement) and workplan. The Agreement and workplan will clearly identify work necessary to complete the EE/CAs at each operable unit, but will leave to the Action Memorandum and associated statements of work the description of actual removal actions that need be conducted. Park City and UPCM will each be required by the Agreement to perform the work described by these documents on the respective operable units. While both Park City and UPCM would not face penalties under this Agreement for refusing to perform the removal actions, EPA would have the right to enforce the Agreement to require compliance, to dismiss the agreement and issue a unilateral administrative order to require the work, or to perform the work and seek cost recovery.

The Agreement will provide Park City with the opportunity to dispose of 362,000 cubic yards of development waste (contaminated soils coming from Park City development activities) in the repository. The Agreement will reflect a set tipping fee for this waste that will be established by the parties during negotiations and incorporated into the Agreement before execution.

Park City and UPCM will each provide covenants not to sue and waive rights against each other and against the governments for any matter arising from the contamination on OUs 3 and 4. In addition, the governments will provide covenants not to sue, contribution protection and maintain reservations commensurate with the scope of work performed pursuant to the Agreement. It is recommended that past response costs be addressed pursuant to this Agreement to provide finality, but may be reserved if these costs remain as the only unresolved issue at the conclusion of negotiations. Finally, natural resource damage claims may be resolved pursuant to the Agreement if a negotiated resolution is achieved, but will be reserved if necessary.

As previously discussed, EPA must soon determine whether to extend negotiations on this matter. In order for that to be done, EPA must receive a written response from Park City and UPCM indicating their acceptance or refusal of the proposal described herein. An acceptance of only some of the terms will be considered a refusal of the proposal. If Park City and UPCM agree to the proposal, negotiations will be extended until January 31, 2011. Given Park City's need to fully address the proposal with its city council, EPA is moving the deadline for responding to the proposal to December 31, 2010. I look forward to your response and, hopefully, further negotiations.

Sincerely,



Matt Cohn
Legal Enforcement Program

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